In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 423

MARYLAND CASUALTY COMPANY, PETITIONER

v.

SEMINOLE TRIBE OF FLORIDA, INC., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES AS *AMICUS CURIAE*

INTEREST OF THE UNITED STATES

The Seminole Tribe of Florida, Inc., respondent in this action, is a recognized tribe of Indians under the general supervision of the United States Department of the Interior. Its corporate charter, the effect of which is the principal issue in this case, was issued by the Secretary of the Interior under the Indian Reorganization Act of June 18, 1934, Section 17, 48 Stat. 988, 25 U.S.C. 477 (Pet. App. A). And the funds sought to be garnished here were drawn from the revolving credit fund maintained by the Bureau of Indian Affairs and deposited to the Tribe's credit pursuant to an agreement between the Tribe and the Bureau. In view of the government's relationship to the sub-

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ject matter in litigation and our general responsibility for the welfare of the Indian tribes, we filed a "Representation of Interest" in the district court (R. 27–30) and participated as *amicus curiae* in the court of appeals. For the same reasons, we submit the present memorandum.[1]

STATEMENT

This action concerns an ancillary garnishment proceeding against bank deposits of the Seminole Tribe of Florida, Inc. After the Tribe was incorporated under the Indian Reorganization Act, it entered into a prime contract with Seldomridge Construction Company for the construction of an office building and an arts and crafts center. Under Article V of the prime contract, the Tribe was not to make final payment until it had received satisfactory evidence that all subcontractors' bills had been paid. This article was also incorporated in a performance and payment bond agreement, to which petitioner, Seldomridge and the Tribe were parties.

Seldomridge represented to the Tribe that it had a claim against a certain subcontractor which would more than offset the subcontractor's claim for payment under the contract in question and agreed to indemnify the Tribe for any liability which might result from the subcontractor's claim. On the basis of this representation and agreement, the Tribe paid Seldomridge on the prime contract. Seldomridge subsequently became insolvent, and the subcontractor,

[1] Although petitioner denominated and served the United States as a respondent in this Court, the government is not, and has never been, a party in this action. Here, as in the courts below, our role is that of an *amicus curiae*.

who had not been paid, recovered a judgment against petitioner as surety. Petitioner, in turn, recovered a judgment on the bond agreement against the Tribe, and the Tribe recovered a judgment on its indemnity agreement against Seldomridge.

To satisfy its judgment, petitioner filed a writ of garnishment attaching the tribal funds on deposit in a national bank. All the funds in question were the proceeds of a $100,000 loan from the United States to the Tribe and were subject to a deposit agreement between the United States, the Tribe and the bank. The deposit agreement expressly provided that the United States had the right to demand withdrawal of all the funds so deposited at any time.

The district court granted the Tribe's motion to dismiss the writ of garnishment on the grounds that, under the Tribe's charter, tribal funds not specially assigned or pledged were immune from attachment by garnishment and that, in any event, the United States had a prior lien on the funds as a result of its deposit agreement (R. 64–65). The court of appeals affirmed, holding that the garnishment action could not lie (Pet. App. B; 361 F. 2d 517).

DISCUSSION

The decisions below are correct, and further review by this Court is not warranted. The Tribe is a sovereign nation and is immune from suit except when expressly authorized by Congress. *United States* v. *United States Fidelity Co.*, 309 U.S. 506, 512–513; *Turner* v. *United States*, 248 U.S. 354, 357–358; *Colliflower* v. *Garland*, 342 F. 2d 369, 376 (C.A. 9). The Indian Reorganization Act does not in itself

waive the Tribe's immunity to suit. It merely authorizes the Secretary of the Interior to issue a charter which may convey to the Tribe, *inter alia*, "such further powers as may be incidental to the conduct of corporate business" (25 U.S.C. 477). The protection of sovereign immunity is lowered only to the extent required by the charter itself.

The Tribe's charter, while giving it the power "[t]o sue or be sued," provides the following explicit limitation (R. 40):

> * * * [B]ut the grant or exercise of such power to sue and to be sued shall not be deemed a consent by the said corporation or the United States to the levy of any judgment, lien or attachment upon the property of the Seminole tribe of Florida, Inc., other than income or chattels especially pledged or assigned.

Since the funds on deposit in this case were not specially pledged or assigned, it is clear that the limited waiver of immunity in the tribal charter did not apply. Therefore the writ of garnishment was properly dismissed.

Contrary to petitioner (Pet. 5), there is no unfairness in limiting the Tribe's amenability to garnishment proceedings. Tribal immunity from suit is well recognized, and anyone interested in dealing with the Tribe can easily ascertain the extent to which this immunity has been waived by examining the charter. Nor is the charter limitation an unwarranted or unusual one. That provision was expressly designed to protect tribal property—an object clearly within the proper authority of the Secretary. *Squire* v. *Capoeman*, 351 U.S. 1, 6, 7; *Tiger* v. *Western Investment*

Co., 221 U.S. 286, 315–317; *United States* v. *Sandoval*, 231 U.S. 28, 46; *Heckman* v. *United States*, 224 U.S. 413, 434; *La Motte* v. *United States*, 254 U.S. 570, 576–577; *United States* v. *Candelaria*, 271 U.S. 432, 440. As petitioner recognizes (Pet. 7), a number of federal government corporations with the authority to sue and be sued remain absolutely immune from any attachment or garnishment.[2] And this Court has expressly upheld a statute restricting garnishment ancillary to judgments against a government corporation to specified funds. *Federal Housing Administration, Region No. 4* v. *Burr*, 309 U.S. 242. The Court's holding in *Burr* is apposite here: "[S]ince [the party] obtains its right to sue from Congress, it necessarily must take it subject to such restrictions as have been imposed" (309 U.S. at 251).

CONCLUSION

For the foregoing reasons, we respectfully submit that the petition for a writ of certiorari should be denied.

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[2] Commodity Credit Corporation (see 15 U.S.C. 714b(c)), Federal Crop Insurance Corporation (see 7 U.S.C. 1506(d)), and the former Farmers' Home Corporation (see Act of July 22, 1937, ch. 517, § 40(f)(3), 50 Stat. 527, repealed by 75 Stat. 318). Cf. Federal Deposite Insurance Corporation (12 U.S.C. 1819).

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